
From:
Sent: Wednesday, 14 November 2018 4:58 PM
To: Leigh Sealy
Cc:
Subject: Invoice for work undertaken for DPAC

Hi Leigh

I trust you are well.

In anticipation of a variety of questions in Parliament next week concerning Minister Courtney and Dr Whittington, we are putting together several Question Time Briefs and general Questions and Answers. These QTBs will ideally contemplate the costs of the investigations.

At this end, we would be grateful if you could provide your invoice for the work undertaken on the Whittington investigation, for our consideration (and payment!).

Please let me know if you have any queries.

Kind regards

Office of the Secretary
Department of Premier and Cabinet
Level 7, 15 Murray Street
GPO Box 123
HOBART TAS 7001
Phone: office - , mobile -
mail:



PREMIER OF TASMANIA

Ms Jenny Gale
Secretary
DEPARTMENT OF PREMIER AND CABINET

Dear Ms Gale

I wish to formalise my verbal request to you on 15 October 2018, that you undertake an investigation in relation to the conflict of interest situation that has arisen through the declared relationship between the Hon Sarah Courtney MP and Dr John Whittington.

I request that you review all relevant decisions made by Minister Courtney and I also seek your advice as to whether a State Service Code of Conduct investigation is required for Dr John Whittington.

I would appreciate if this request is completed as soon as possible.

As you are aware, in relation to the Hon Sarah Courtney MP, I have sought independent advice from Mr Damien Bugg QC, to determine whether there has been a potential breach of the Ministerial Code of Conduct.

I await the outcome of your review and your advice on whether a Code of Conduct investigation is warranted.

Yours sincerely

Will Hodgman MP
Premier

17 OCT 2018

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PREMIER OF TASMANIA

Ms Jenny Gale
Secretary
DEPARTMENT OF PREMIER AND CABINET

19 OCT 2018

Dear Ms Gale

Please find attached a report provided to me by Mr Damien Bugg QC regarding whether there has been a potential breach of the Ministerial Code of Conduct by the Hon Sarah Courtney MP.

I provide this report to you as there may be findings of fact by Mr Damien Bugg QC that are relevant to your consideration of all relevant decisions made by Hon Sarah Courtney MP and whether a State Service Code of Conduct investigation is required for Dr John Whittington.

I await the outcome of your review and your advice on whether a Code of Conduct investigation is warranted.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Will Hodgman'.

Will Hodgman MP
Premier

Encl.



Community and Public Sector Union

CPSU (State Public Services Federation Tasmania) Inc. - CPSU (SPSF Group, Tasmanian Branch)

Friday, 19 October 2018

Hon Will Hodgman
Premier
L11 15 Murray Street
HOBART TAS 7000

Dear Premier,

Re: Investigation into decisions involving the Minister for Primary Industries and the Secretary of the Department of Primary Industries, Parks, Water and Environment

I write to raise with you concerns about the investigation you have initiated into possible conflict of interest in decisions involving the Minister for Primary Industries and/or the Secretary of the Department of Primary Industries, Parks, Water and Environment (DPIPWE). These concerns have been raised by a number of DPIPWE staff and we felt it was important they be brought to your attention as soon as possible.

We understand there are a number of DPIPWE staff who have information that could be relevant to the investigation. We understand this information goes specifically to decisions that were taken by the Minister for Primary Industries and/or the Secretary of DPIPWE to accept certain recommendations and also, and perhaps more importantly, decisions not to accept certain recommendations.

The concerns of the staff we have heard from are threefold.

Firstly, they are concerned that the investigation you have ordered will only look at those decisions that were made to proceed with certain matters and therefore ignore decisions that were made not to proceed or where recommendations were dismissed. Any investigation should fully review all these matters and not just be limited to decisions to proceed. A conflict of interest can exist in both circumstances. We understand there are a number of matters that certain DPIPWE staff are aware of that they believe should form part of this investigation that would fit into the latter category.

Secondly, DPIPWE staff are not in a position to provide frank advice or evidence to an investigator unless they are instructed by a person in authority to do so. Unless they are subpoenaed or provided with an exemption from prosecution under the State Service Code of Conduct they risk their employment if they reveal information they have had access to through the course of their employment or if their evidence brings DPIPWE or the State Service into disrepute.

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No investigation can claim to have fully considered the relevant evidence unless DPIPWE staff are encouraged, supported and protected to disclose what they know.

Finally, there are two staff in your Office who until recently held senior positions in DPIPWE and would therefore have worked very closely with the Minister and the Secretary, perhaps on matters now subject to investigation. The staff in question are your Chief of Staff Tim Baker who was until recently a Deputy Secretary in DPIPWE and the former DPIPWE Director of People and Culture Alice Holeywell-Jones who is currently on secondment to your Office.

It has been expressed to the CPSU by some DPIPWE staff that for an investigation to be considered independent it is critical that these two Officers not be involved. It's unclear how this can be achieved when one of your primary investigators, the Secretary of Premier & Cabinet, effectively reports to you through your Chief of Staff.

I hope you will take these matters into urgent consideration as there are some very stressed DPIPWE staff out there and encouraging, supporting and protecting them to give evidence would be in their best interests and in the public interest.

Yours sincerely,

Tom Lynch
General Secretary
CPSU (SPSFT) Inc.



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19 October 2018

Hon Will Hodgman MP
PREMIER OF TASMANIA

Proposed Code of Conduct Investigation for Dr John Whittington

I refer to your letter of 15 October 2018 requesting that I undertake an investigation in relation to the conflict of interest that has arisen through the declared relationship between the Hon Sarah Courtney MP and Dr John Whittington.

Specifically, you have requested that I advise whether a State Service Code of Conduct Investigation is required for Dr Whittington. I have now determined that a Code of Conduct investigation is required in relation to this matter.

I have reached this decision on the basis of findings of fact provided in the report of Mr Damien Bugg QC, who you appointed to determine whether there has been a been a potential breach of the Ministerial Code of Conduct by Minister Courtney.

Mr Bugg's report provides that it is his view that Minister Courtney failed to declare a conflict of interest in accordance with the Ministerial Code of Conduct. Relevantly, Mr Bugg has advised that Minister Courtney should have disclosed a conflict of interest promptly, on or about 13 September 2018.

On the basis of these findings of Mr Bugg in relation to Minister Courtney, it is my preliminary view that there are reasonable grounds to warrant an investigation into whether Dr Whittington breached the *State Service Act 2000* Code of Conduct, by failing to appropriately declare a conflict of interest in connection with his appointment to the office of Secretary, Department of Primary Industries, Parks, Water and Environment.

For this reason, I recommend that I now move to appoint an independent investigator to investigate the alleged breach by Dr Whittington in accordance with any relevant procedures. Subject to your confirmation, the appointed investigator will provide me with a report of the relevant evidence and any other related documentary material for my consideration and advice.

If, based on the material that is provided to me, it is open to make findings, or recommendations, or both that might prejudice the interests of Dr Whittington as to his employment, or his status or reputation, I will provide Dr Whittington with details of those findings or recommendations, and the basis for them, and allow him a reasonable opportunity to provide me with a response before making a final determination. I will provide my finding and any recommendations to you.

I await your advice on my recommendation.

Yours sincerely

Jenny Gale
Jenny Gale
Secretary

Kelly, Carmen (DPaC)

From: Gale, Jenny (DPaC)
Sent: Friday, 19 October 2018 6:43 PM
To: Hodgman, Will (DPaC)
Cc: [redacted] (DPaC)
Subject: Confidential Conflict of Interest Matter
Attachments: Memo - Secretary DPAC to Premier - Confirmation of Code of Conduct Inves....pdf

Categories: Red Category

Dear Premier, please find attached a memo outlining my findings as to whether a Code of Conduct Investigation is required for John Whittington in relation to the conflict of interest that has arisen through the declared relationship between Dr Whittington and the Hon Sarah Courtney MP.

The review of relevant decisions taken by Minister Courtney is expected to be finalised on or about Thursday 25 October. As I will be on leave from Monday, the Acting Secretary will provide you with that advice.

Best wishes
 Jenny

Jenny Gale
 Secretary
 Department of Premier and Cabinet

T: 08 9422 2000 | F: 08 9422 2001 | E: jenny.gale@dpac.tas.gov.au





PREMIER OF TASMANIA

22 OCT 2018

Ms Ruth McArdle
Acting Secretary
DEPARTMENT OF PREMIER AND CABINET

I refer to Ms Jenny Gale, Secretary, Department of Premier and Cabinet's memorandum on 19 October 2018 advising me on whether a *State Service Act 2000* Code of Conduct investigation is required for Dr John Whittington in relation to the declared relationship between Dr Whittington and Hon Sarah Courtney MP.

I accept Ms Gale's recommendation that it is her preliminary view there are reasonable grounds to warrant an investigation into whether Dr John Whittington breached the *State Service Act 2000* Code of Conduct, by failing to appropriately declare a conflict of interest in relation to his appointment to the office of Secretary, Department of Primary Industries, Parks, Water and Environment and his relationship with Ms Courtney.

I note that Ms Gale's preliminary view is based on the findings of fact by Mr Damien Bugg QC, that the personal relationship between Dr Whittington and Ms Courtney commenced on or about 13 September 2018.

Given this, I approve Ms Gale's recommendation that the Department immediately engage an independent investigator to investigate the alleged breach. I note that the investigator will be requested to provide Ms Gale with a report on findings; which she will then consider together with any other documentation.

I request that you or Ms Gale provide me with advice on the outcome of this investigation and any necessary actions arising as soon as practicable.

Yours sincerely

Will Hodgman MP
Premier

Department of Premier and Cabinet

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The Hon Will Hodgman MP
Premier of Tasmania
Level 11, 15 Murray Street
HOBART TAS 7001

Dear Premier

I refer to your letter of 17 October 2018 in which you requested that I undertake a review of all relevant decisions of the Hon Sarah Courtney MP, in response to the declared relationship between the Minister and Dr John Whittington, Secretary Department of Primary Industries, Parks, Water and the Environment.

In response to your request, a comprehensive range of documents relating to the decisions of Minister Courtney was obtained, including Ministerial Briefings, Minutes and letters signed by Minister Courtney, correspondence and relevant Cabinet documents. I note that the time period for the assessment of relevant decisions has been informed by the findings in the report of Mr Damian Bugg QC, who undertook the Ministerial Code of Conduct investigation into Minister Courtney.

A review of that documentation has now been independently completed by staff within DPAC. This review has been undertaken in consultation with the Solicitor-General.

I wish to formally advise that the review has not identified any material issues in relation to the decisions made by Minister Courtney during the relevant period.

Yours sincerely

Jenny Gale
Secretary

29/10/18

15

+ attachment
to #16

Department of Premier and Cabinet

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The Hon Will Hodgman MP
Premier of Tasmania
Level 11, 15 Murray Street
HOBART TAS 7001

Dear Premier

I refer to your letter to Acting Secretary, Ms Ruth McArdle of 22 October 2018, in which you approved my recommendation that the Department of Premier and Cabinet immediately engage an independent investigator, to investigate the alleged breach of the State Service Code of Conduct by Dr John Whittington (the 'Approval Letter'). As noted in the Approval Letter, it was agreed that the independent investigator was to provide me with a report on any findings, which I would then consider with any other documentation before advising you on the outcome of the investigation.

Your approval to engage an independent investigator was based on my preliminary view that there were reasonable grounds to warrant an investigation into whether Dr Whittington breached the *State Service Act 2000* Code of Conduct (the 'SSCoC') by failing to appropriately declare a conflict of interest. In reaching this conclusion the separate findings of Mr Damien Bugg QC into a breach of the Ministerial Code of Conduct were taken into account.

Following receipt of the Approval Letter, Ms McArdle as the Acting Secretary took immediate steps to appoint Mr Leigh Sealy SC as the independent investigator. Mr Sealy was subsequently instructed on 22 October 2018 to investigate whether Dr Whittington had breached the SSCoC (and more particularly, section 9(8) of the SSCoC), by failing to appropriately declare a conflict of interest in relation to his appointment to the office of Secretary and his relationship with Minister Courtney. Relevantly, section 9(8) provides:

'An employee must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment.'

On 29 October 2018, Mr Sealy completed his investigation and provided his report to me. That report is attached to this letter. When considering Mr Sealy's report, it is important to bear in mind that section 9(8) of the SSCoC sets a statutory norm, whereas the Ministerial Code of Conduct depends on a range of considerations, including matters of policy as between you and members of the Cabinet. Therefore, the application of the Ministerial Code of Conduct to the present circumstances, may render a different answer to the application of the SSCoC.

In summary, Mr Sealy has found that there is no evidence to suggest that Dr Whittington was, by reason of his personal relationship with the Minister, subject to any *actual* conflict of interest with his duties on any date prior to him formally disclosing that relationship to me on 14 October 2018.

Mr Sealy's report considers in detail whether a 'conflict of interest' under the SSCoC means only an actual conflict of interest, or whether it also extends to a potential or perceived conflict of interest. Ultimately, it is Mr Sealy's view that the reference to a 'conflict of interest' in the SSCoC should be interpreted as being a reference to a real or actual conflict of interest, but not to a potential, perceived or apparent conflict of interest. For this reason, Mr Sealy suggested that even if it is assumed that the relationship between Dr Whittington and the Minister might have created a conflict of interest prior to the date of disclosure by Dr Whittington, a perceived conflict of interest of this nature would not, in Mr Sealy's view, equate to a breach of the SSCoC.

Mr Sealy is also of the view that there is no evidence to suggest that any decision made by either the Minister or by Dr Whittington prior to 14 October 2018, was in any way, improperly affected or influenced by the personal relationship that existed between them. I note that I separately advised you by way of letter that a review of the decisions of Minister Courtney, had been independently undertaken and completed by Department of Premier and Cabinet staff, and that the review had not identified any material issues in relation to those decisions.

For the reasons identified above, Mr Sealy has found that Dr Whittington did not breach section 9(8) of the SSCoC, and that there is no evidence to suggest that he has breached any other provision of the SSCoC.

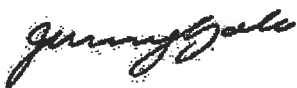
It is now a matter for you to put your mind to all the information to determine whether Dr Whittington breached the SSCoC.

As you are Dr Whittington's employer, and in light of the fact that a conflict has been declared by each of Minister Courtney and Dr Whittington, it is also a matter for you to determine how best to manage any declared conflict. However, it is my view that the current declared conflict of interests as between Minister Courtney and Dr Whittington has created a situation which is untenable for them to continue as Minister and Secretary in the same portfolios. It is prudent for me to advise that if you determine, based on the evidence and this letter of advice, that Dr Whittington has not breached the SSCoC, there are limited options under his Instrument of Appointment from which to manage the conflict. Specifically, you can:

- 1) advise Dr Whittington that on completion of his approved leave period, he may return to his existing appointment (in which case you would manage the existing declared conflict of interest through such other means as you deem appropriate); or
- 2) direct Dr Whittington to undertake the functions and perform the duties of another office. Should you elect to reassign Dr Whittington, in accordance with his instrument he must be paid an amount which is equal to, or greater than his existing salary. Should you be minded to employ this option, I would recommend we have further discussions concerning the appropriate action.

Following your consideration of these findings, if you wish to discuss any aspect of this matter in further detail, please do not hesitate to contact me.

Yours sincerely



Jenny Gale
Secretary

30/10/18



PREMIER OF TASMANIA

31 OCT 2018

Dr John Whittington
Secretary
DEPARTMENT OF PRIMARY INDUSTRIES, PARKS, WATER AND ENVIRONMENT

Dear Dr Whittington

I refer to correspondence you received from the Secretary, Department of Premier and Cabinet (DPAC) on 19 October 2018 and subsequent correspondence from Acting Secretary, Ms Ruth McArdle on 22 October 2018, confirming that I had accepted a recommendation to appoint an independent investigator to investigate your alleged breach of the State Service Code of Conduct ('SSCoC').

Specifically, the Acting Secretary's letter to you clarified that Ms Gale had formed a preliminary view that there were reasonable grounds to warrant an investigation into whether you breached the SSCoC, by failing to appropriately declare a conflict of interest, namely by failing to disclose your personal relationship with Ms Courtney promptly on or about 13 September 2018.

As you were advised, on my authority Mr Leigh Sealy SC was subsequently appointed to conduct an independent investigation into whether you had breached the SSCoC in relation to this matter.

I wish to advise that Mr Sealy has concluded his investigation and I have determined on the basis of the information before me that there is no evidence to suggest that you have breached the SSCoC.

I request that you meet with the Secretary, DPAC to be counselled on the importance of managing conflicts of interest and to discuss the appropriate steps to disclose, manage and avoid any future actual, perceived or potential conflicts, if and when they arise and furthermore, provide your assurances that this will be properly managed.

I appreciate your cooperation in the resolution of this matter.

Yours sincerely

Will Hodgman MP
Premier



PREMIER OF TASMANIA

E-MAILED
31 OCT 2018

Ms Jenny Gale
Secretary
DEPARTMENT OF PREMIER AND CABINET

Dear Ms Gale

I refer to your letter of 30 October 2018, in which you provided me with findings in relation to the investigation into the alleged breach of the State Service Code of Conduct by Dr John Whittington.

I have considered your advice in detail and the report provided by Mr Leigh Sealy SC and I have concluded that Dr Whittington has not breached the State Service Code of Conduct.

However, as a conflict of interest has now been declared by each of Minister Courtney and Dr Whittington, I agree with your advice that their current professional situation is untenable. In managing this conflict of interest, I have also been mindful of the advice you have provided in relation to Dr Whittington's instrument of appointment and also his considerable experience and expertise as Secretary for the Department of Primary Industries, Parks, Water and Environment.

Accordingly, I have determined that the most appropriate way to manage this conflict of interest whilst creating the least disruption is to change Ms Courtney's portfolio of Ministerial responsibilities. For this reason, I now advise that Minister Courtney will:

- 1) cease to be the Minister for Primary Industries and Water and the Minister for Racing; and
- 2) become the Minister for Resources and the Minister for Building and Construction.

I request that you meet with Mr Whittington to counsel him on the importance of managing conflicts of interest and advise him that he will need to take appropriate steps to disclose, manage and avoid any future actual, perceived or potential conflicts, if and when they arise and furthermore, seek his assurances that they will be properly managed.

I thank you for your assistance in relation to this matter.

Yours sincerely

Will Hodgman MP
Premier



PREMIER OF TASMANIA

7 NOV 2018

Mr Tom Lynch
General Secretary
CPSU (SPSF) Tasmania
157 Collins Street
HOBART TAS 7000

Dear Mr Lynch

I refer to your letter titled 'Investigation into decisions involving the Minister for Primary Industries and the Secretary of the Department of Primary Industries, Parks, Water and Environment' dated 19 October 2018.

In that letter, you raise concerns about the scope of what will be included in the investigation, the protection of Department of Primary Industries, Parks, Water and Environment (DPIPWE) employees having input into any investigation, and perceived conflicts of interest relating to senior DPIPWE employees.

At the outset, I would like to indicate that all decisions I have taken in this matter have ensured the integrity of the process and that the issues are dealt with on the facts.

On 17 October 2018, I requested the Secretary, Department of Premier and Cabinet (DPAC) review all relevant decisions made by Minister Courtney and report on any discrepancies in decision-making between the Minister and Dr John Whittington, Secretary, DPIPWE. The review was conducted independently by the Secretary, supported by officers within DPAC. This included examining all correspondence, briefing notes and other documentation as relevant.

I can confirm that the review into decisions is now complete, and there are no material issues or any inconsistencies related to the decisions made by Minister Courtney as they relate to the Secretary, DPIPWE. The review was able to be undertaken thoroughly and expeditiously due to the impeccable record management systems in DPIPWE that enable the auditing of document workflow including authorship, version control and approvals.

In regards to the involvement of DPIPWE employees in this review, you raised a range of general issues in your letter, however it is difficult to assess these without specific details and timeframes. All State Service employees have access to grievance processes to submit issues if they have concerns around conflict of interest matters and I would encourage any DPIPWE employee to use the normal grievance mechanisms that are available to them. I have full confidence that grievances or disclosures are treated confidentially and without repercussions for the individual employees.

In relation to the other specific issues you raised, the Secretary, DPAC reported directly to me as Premier on this matter, and not through my Chief of Staff. The two officers in my Office that you refer to in your letter were not involved in the review, and the decision on a course of action has been made by me alone on the basis of the evidence before me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Will Hodgman', with a long horizontal flourish extending to the right.

Will Hodgman MP
Premier